ESTTA Tracking number:

ESTTA302328

Filing date:

08/21/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77336400
Applicant	U.S. Vision, Inc.
Applied for Mark	ATTITUDE EYEWEAR
Correspondence Address	SHERRY H. FLAX SAUL EWING LLP 500 E PRATT ST BALTIMORE, MD 21202-3133 UNITED STATES sflax@saul.com
Submission	Appeal Brief
Attachments	attitude.pdf (1 page)(20217 bytes) att.pdf (14 pages)(679225 bytes)
Filer's Name	Sherry Flax
Filer's e-mail	sflax@saul.com
Signature	/sherry flax/
Date	08/21/2009

The Examining Attorney refused registration of Applicant's ATTITUDE EYEWEAR (STYLIZED) for "Eyewear; Eyewear accessories, namely, straps, neck cords and head straps which restrain eyewear from movement on a wearer; Eyeglass cases; Eyeglass frames; Eyeglasses; Sunglasses" on the basis of likelihood of confusion with the registered mark ATTITUDE for eyeglass lenses. Although the marks and the goods are similar, the marks are not likely to be confused by consumers because the channels of trade are entirely distinctive and the consumers of the registered goods are highly sophisticated.

Registrant is a manufacturer of a sophisticated specialty product -- eyeglass lenses -- that are marketed and sold to optometrists and similar eye professionals. Registrant exhibits its products at trade shows and its products are manufactured at optometric labs. *See* Registrant's web site, submitted herewith. Because these consumers are highly educated in this field and deal on a one-to-one basis with Registrant as the manufacturer of these goods, there is little chance, much less likelihood, that the consumers are likely to not know with whom they are dealing.

Applicant's consumers are the retail end users of value priced eyeglass frames and eyeglasses. Accordingly, there is no overlap whatsoever between the consumers of ATTITUDE lenses and ATTITUDE EYEWEAR sunglasses, eyeglasses, and accessories.

The cited mark, consisting of the word ATTITUDE alone, is diluted. The USPTO has registered other marks that include the term ATTITUDE for the goods identical to Applicant's goods. See MISS ATTITUDE, U.S. Reg. No. 2934000, is registered for sunglasses; AMERICAN ATTITUDE, U.S. Reg. 3319929; REAL LIFE UV PROTECTION WITH ATTITUDE LYNN ROBERTS INTERNATIONAL, U.S. Reg. No. 2863967. The mark POSITIVE ATTITUDE, U.S. Ser. No. 77/646653, is pending for "eyeglasses, sunglasses, magnifying glasses; eyeglass frames and lenses, eyeglass accessories, namely, cases and chains" and has been approved for publication. Copies of the TESS records are submitted herewith. The coexistence of the above marks, containing the word ATTITUDE, for similar goods proves that the cited mark is diluted and no party should have the exclusive right to use the word ATTITUDE. A search of the USPTO database for registrations in International Class 025, containing goods highly related to Applicant's goods, reveals 65 registered marks that consist of or contain the term ATTITUDE. The search result is submitted herewith.

If registrations for similar marks owned by more than one registrant are found, the extent to which dilution may indicate that there is no likelihood of confusion should be considered. TMEP §1207.01(d)(x). Applicant's mark, in its entirety, is not likely to cause confusion with the cited mark and should be allowed to coexist with the cited mark and the other third party marks referenced above. Finally, third party registrations indicate the willingness of the USPTO to register marks that include the term ATTITUDE for similar because U.S. consumers recognize the differences between the marks.

For these reasons, Applicant respectfully urges that the final refusal be reversed and its mark be allowed.



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At Shamir, We ReCreate Perfect Vision®

Offering the most advanced technological lens solution available to the marketplace at any given time.

Shamir Optical Industry's <u>patented technological breakthrough</u>, <u>Eye-Point Technology</u> is a radical departure from conventional eyeglass lens analysis tools. Ensuring an accurate design and analysis, it enables the development and manufacturing of sophisticated, tailor-made progressive lenses.

Shami FREEFORI

Shamir Freeform T A Visionary Appro Perfect Vision®.





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EYE CARE PROFESSIONAL > ABOUT SHAMIR > COMPANY PROFILE & HISTORY Quick Reference Guide About Shamir - Company Profile & History - Vision & Mission - Legal Information & Patented Technology - NASDAQ

Company Profile & History

Founded in 1972, Shamir Optical Industry Ltd is one of the world's leading manufactur quality progressive lenses and molds. Famous for its Innovation, Technological Sophis rigorous Quality Assurance practices, Shamir is known for its quick response to changin demands, and its ability to fill custom-design, private label product range orders.

Originally established as a manufacturer of bi-focal lenses, within a decade's time Sha among the world's top ten companies to develop and market original progressive lens progressive mold and lens launched the company onto the international map, proving point for Shamir. It's Shamir's technological expertise that has made it a company with it developed its <u>first technological breakthrough with its Eye-Point Technology®</u>.

Located in San Diego, California, Shamir Insight serves as the North American distribut marketing center for Shamir's family of premium progressive lenses, which include Ger progressive lens; Piccolo®, short corridor lens; Office™, occupational lens; Attitude™, f frames; and Shamir Freeform, personalized lens.

Shamir Insight, Inc. employs a highly trained, professional national sales team skilled and illustrating the importance of the technology behind our lenses. Shamir's product I through Shamir's national network of ReCreating Perfect Vision® Laboratory Partners. Inc. is a member of the Vision Council of America and supports VCA's "Check Yearly, S program.



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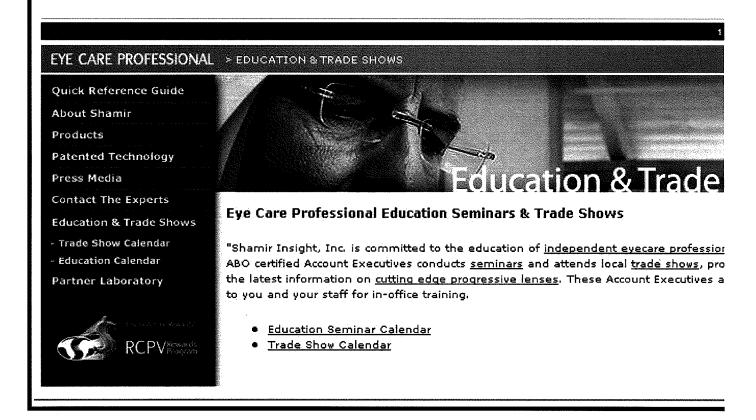
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Partner Laboratory	Zel segene		2	_		
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Typed Drawing

Word Mark

MISS ATTITUDE

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20040200. FIRST USE

IN COMMERCE: 20040200

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

78191055

Filing Date

December 4, 2002

Current Filing Basis

Original Filing Basis 1B

Published for

August 12, 2003

Opposition

Registration Number 2934000

Registration Date

March 15, 2005

Owner

(REGISTRANT) McRae's, Inc. CORPORATION MISSISSIPPI 750 Lakeshore Parkway

Birmingham ALABAMA 35211

Assignment

Recorded

ASSIGNMENT RECORDED

Attorney of Record

Wendy L. Robertson

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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Word Mark

AA AMERICAN ATTITUDE

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Eyeglasses, sunglasses, eyeglass cases, eyeglass chains, eyeglass frames, eyeglass lenses, optical frames, optical lenses. FIRST USE: 20050701.

FIRST USE IN COMMERCE: 20050701

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

26.11.21 - Rectangles that are completely or partially shaded

Trademark Search Facility Classification

LETS-1 AA A single letter, multiples of a single letter or in combination with a design SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals

and polygons

Serial Number

78615155 April 22, 2005

Filing Date

Code

1A

Current Filing Basis

. . .

Original Filing Basis

1B

Published for Opposition

September 12, 2006

Registration Number

3319929

Registration

October 23, 2007

Date Owner

(REGISTRANT) CREATIVE EYEWEAR INC. CORPORATION NEW YORK 1828-B TROUTMAN

STREET RIDGEWOOD NEW YORK 11385

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record

Lawrence E. Abelman

Description of

Mark

Color is not claimed as a feature of the mark.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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Word Mark

REAL LIFE UV PROTECTION WITH ATTITUDE LYNN ROBERTS INTERNATIONAL

Goods and **Services**

IC 009, US 021 023 026 036 038. G & S: sunglasses. FIRST USE: 20000801. FIRST USE IN

COMMERCE: 20000801

Mark Drawing

Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search 02.01.31 - Men, stylized, including men depicted in caricature form

Code

26.11.10 - Rectangles divided once into two sections

CHANGE IN REGISTRATION HAS OCCURRED

26.11.21 - Rectangles that are completely or partially shaded

Serial Number 76170633

Filing Date

November 24, 2000

Current Filing

Basis

1A

Original Filing

Basis

1A

Published for

Opposition

April 27, 2004

Change In Registration

Registration Number

2863967

Registration

July 20, 2004

Date Owner

(REGISTRANT) Lynn Roberts International, Inc. CORPORATION NEBRASKA 7700 F Street

Omaha NEBRASKA 681271827

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record

William D. O'Neill

Disclaimer

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "UV PROTECTION" and

"INTERNATIONAL" APART FROM THE MARK AS SHOWN

Mark

Description of The mark consists of in the top third a photograph of a man kayaking in whitewater and a man

snowboarding. The words "REAL LIFE" in yellow are written across the photograph. The

background of the bottom third is red, with the words "UV PROTECTION WITH ATTITUDE" written in white and the words "LYN ROBERTS INTERNATIONAL" written black.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Other Data

Lynn Roberts does not identify a particular living individual.

Live/Dead

Indicator

LIVE

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ASSIGN Status TTAB Status (Use the "Back" button of the Internet TARR Status **TDR**

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POSITIVE ATTITUDE

Word Mark

POSITIVE ATTITUDE

Goods and Services

IC 009. US 021 023 026 036 038. G & S: eyeglasses, sunglasses, magnifying glasses;

eyeglass frames and lenses, eyeglass accessories, namely, cases and chains

Standard Characters

Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number

77646653

Filing Date

January 9, 2009

Current Filing Basis

1B

Original Filing Basis

1B

Published for

Opposition

April 14, 2009

Owner

(APPLICANT) Positive Attitude, Inc. CORPORATION NEW YORK 4 Farm Hill Lane

Muttontown NEW YORK 11732

Attorney of Record

Larry Miller

Prior Registrations

1530965

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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I.HOME | SITE INDEX | SEARCH | eBUSINESS | HELP | PRIVACY POLICY



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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	79061991	3651468	STOMPA PURE ATTITUDE	TARR	LIVE
2	79054562	3627227	CLUB DES SPORTS THE SPORTING ATTITUDE	TARR	LIVE
3	78964577		ACTION EDGE ACTIVEWEAR WITH ATTITUDE POWER STRENGTH	TARR	LIVE
4	78904252	3227742	NO ATTITUDE	TARR	LIVE
5	78928942	3578068	KONGO - IT'S AN ATTITUDE	TARR	LIVE
6	78920067	3428697	DNA DARING NEW ATTITUDE	TARR	LIVE
7	78966418	3505395	ATTITUDE	TARR	LIVE
8	78740605	3467849	EAST/WEST ATTITUDE + LATITUDE E/W	TARR	LIVE
9	78768844	3451033	LITTLE GIRL, BIG ATTITUDE	TARR	LIVE
10	78959334	3393527	ATTITUDE UNKNOWN	TARR	LIVE
11	78975717	2934263	MISS ATTITUDE	TARR	LIVE
12	78730147	3141902	JANEYS WITH ATTITUDE	TARR	LIVE
13	78715060	3181993	BAREFOOT ATTITUDE	TARR	LIVE
14	78652187	3303762	MORE THAN AN ATTITUDEMORE THAN A LIFESTYLETHAT'S MEMOIS	TARR	LIVE
15	78548241	3146737	COWGIRL ATTITUDE	TARR	LIVE
16	78534768	3182589	LONE STAR ATTITUDE	TARR	LIVE
17	78044809	2803512	ATTITUDE POWER!	TARR	LIVE
18	78480724	3017738	JM ATTITUDE	TARR	LIVE
19	78498358	3113794	CASUAL ATTITUDE	TARR	LIVE
20	78467353	3057323	AA ABSOLUTE ATTITUDE	TARR	LIVE
21	78455976	3094172	BCBG ATTITUDE	TARR	LIVE
22	78324678		CHICKS WITH ATTITUDE	TARR	DEAD

23	78301215	3109997	ELITE ATTITUDE	TARR	LIVE
24	78278423	3335840	UA UNDERGROUND ATTITUDE	TARR	LIVE
25	78259717	2877405	GUS ATTITUDE WEAR GET-U-SOME	TARR	LIVE
26	78193586	3068907	BALENO ATTITUDE	TARR	LIVE
27	78148434	2786354	3POINTPLAY ACADEMICS. ATTITUDE. ATHLETICS.	TARR	LIVE
28	78144753	2812869	MONSTER ATTITUDE	TARR	LIVE
29	77612739		ATTITUDE OF GRATITUDE	TARR	LIVE
30	77169869		EVERYONE HAS AN ATTITUDE	TARR	LIVE
31	77804554		MUSCLE BODY WEAR ATTITUDE.PASSION.ROMANCE SHOW SOME MUSCLE	TARR	LIVE
32	77575357		BODÁYSHESS LMS BEAUTY - CONFIDENCE - ATTITUDE - CHARISMA BEAUTY - CONFIDENCE - ATTITUDE - CHARISMA	TARR	LIVE
33	77359862		LITTLE MISS ATTITUDE	TARR	LIVE
34	77657864	3666390	SASSY TRIO ACCENTS WITH ATTITUDE WWW.SASSYTRIO.COM	TARR	LIVE
35	77348926		MORE GRATITUDE, LESS ATTITUDE	TARR	LIVE
36	77346137	3495233	NANOBUGSMICROBES WITH ATTITUDE!	TARR	LIVE
37	77651861	3660648	MASCULINE ATTITUDE, FEMININE FIT	TARR	LIVE
38	77710487		MAUI NORTH SHORE ATTITUDE	TARR	LIVE
39	77710482		MAUI NORTH SHORE ATTITUDE	TARR	LIVE
40	77422700		BITE MY WORM.COM FISHING WITH AN ATTITUDE!	TARR	LIVE
41	77755482		BAD ATTITUDE CLUB	TARR	LIVE
42	77749053		STICKMAN CAN'T AFFORD AN ATTITUDE 'CAUSE HE'S NOTHING BUT A STICK	TARR	LIVE
43	77133936		EGGS WITH ATTITUDE	TARR	LIVE
44	77365823	3616988	ATTITUDE AA ATHLETICS	TARR	LIVE
45	77630455		MISS ATTITUDE	TARR	LIVE
46	77716377		JUST ATTITUDE	TARR	LIVE
47	77427466		RUSK FASHION+CULTURE+ATTITUDE	TARR	LIVE
48	77706488		THE ONLY RULE IS ATTITUDE	TARR	LIVE
49	77067348		GRATITUDE ATTITUDE	TARR	LIVE
50	77234653	3597142	SLIMINIZER- SHAPEWEAR WITH AN "ATTITUDE"	TARR	LIVE
51	77686299		30-ATTITUDE	TARR	LIVE
52	77680483		POSITIVE ATTITUDE	TARR	LIVE
53	77590787]	ATTITUDE JACK	TARR	LIVE
54	77208894		ACT ATTITUDE COUNTS TODAY	TARR	LIVE
55	77588017		MOON SHINE ATTITUDE ATTIRE	TARR	LIVE
56	77642087		WWW.FUNCTIONALUTILITY.COM F.U. TOUGH GEAR - TOUGH ATTITUDE	TARR	LIVE
57	77405824]	NATURAL ATTITUDE	TARR	LIVE
58	77524189]	ATTITUDE SPELLS SUCCESS	TARR	LIVE
59	77238860	3408539	ATTITUDE SKINZ	TARR	LIVE
60	77273987		P.A.T.H. POSITIVE ATTITUDE THROUGH HOPE	TARR	LIVE
	77198668	3528399	MISS ATTITUDE	TARR	LIVE
	77327237	3498248	RITCH JEANS UPSCALE FASHION AVEC ATTITUDE DESIGNER APPAREL	TARR	LIVE

63	77975654	3486106	GRATITUDE ATTITUDE	TARR	LIVE
64	77101161		MMA MONEY MAKING ATTITUDE	TARR	DEAD
65	77216083	3455041	HEADWEAR WITH AN ATTITUDE	TARR	LIVE
66	77213897	3452444	COWGIRL ATTITUDE	TARR	LIVE
67	77298394	3448589	ATTITUDE UNKNOWN	TARR	LIVE
68	77207370	3384614	NK ATTITUDE	TARR	LIVE
69	77207276	3384610	NK ATTITUDE	TARR	LIVE
70	77149056	3384302	PLANE ATTITUDE	TARR	LIVE
71	77148018	3384297	PLANE ATTITUDE	TARR	LIVE
72	77220943	3369113	ATTITUDE GOLD	TARR	LIVE
73	77146939	3358838	PLANE ATTITUDE	TARR	LIVE
74	76242503	2630788	BAD ATTITUDE	TARR	LIVE
75	76043656	2942327	COOL ATTITUDE	TARR	LIVE
76	76565791	2992952	ATTITUDE 101 IT'S ALL IN YOUR HEAD	TARR	LIVE
77	76534120	3077106	ATTITUDE 101	TARR	LIVE
78	76457964	2948973	WOMENS ATTITUDE	TARR	LIVE
79	76219090	2510307	COMFORT WITH AN ATTITUDE	TARR	LIVE
80	76511999	2814356	I JUDGE BY ATTITUDE NOT BY COLOR, USA	TARR	LIVE
81	76637878	3094477	PURE ATTITUDE	TARR	LIVE
82	76552974	2952788	ACTIVE ATTITUDE	TARR	LIVE
83	76495047	2911477	BLUE ATTITUDE	TARR	LIVE
84	76477456	2808134	HAWAIIAN ATTITUDE	TARR	LIVE
85	76464261	2769072	RITCH JEANS TM RITCH DESIGNER APPAREL UPSCALE FASHION AVEC ATTITUDE	TARR	LIVE
86	75514340	2652133	SPORTS ATTITUDE	TARR	LIVE
87	75983131	2702921	CHEESEBURGER WITH AN ATTITUDE	TARR	LIVE
88	75980742	2474551	BARE ATTITUDE	TARR	LIVE
89	75592583	2281815	WINNING IS AN ATTITUDE	TARR	LIVE
90	75494432	2457742	GOT ATTITUDE? THEN WEAR IT!	TARR	LIVE
91	75457036		Z IN THE ZONE ATTITUDE WEAR	TARR	LIVE
92	75328503	2915417	ALTITUDE AFFECTS ATTITUDE	TARR	LIVE
93	75248419	2771900	A BIG ATTITUDE	TARR	LIVE
94	73740171	1530965	POSITIVE ATTITUDE	TARR	LIVE
95	73776413	1558147	JOURNEYS AN ATTITUDE YOU CAN WEAR	TARR	LIVE

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